

## **5-7.000 THE GENERAL LITIGATION SECTION**

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### **5-7.001**

#### **Establishment**

The General Litigation Section was created by Order of June 28, 1960, consolidating the Trial Section and the Water Resources Section, as modified by the ENRD Directive 14-86 of April 28, 1986, consolidating the Indian Claims Section into it.

### **5-7.100 Area of Responsibility**

The General Litigation Section handles all pending and contemplated cases, matters and proceedings in the trial courts, assigned to the Environment and Natural Resources Division, except condemnation proceedings brought by the United States and matters specifically assigned to the Indian Resources Section, the Wildlife and Marine Resources Section, the Environmental Crimes Section, Environmental Defense Section, and the Environmental Enforcement Section.

## 5-7.120 Statutes Administered

The General Litigation Section supervises and conducts litigation arising under several different classes of statutes, described below, and also under treaties and agreements with Indians, Executive Orders, common law, and the laws of various states. The listing is not exhaustive, but illustrative, and contains the primary statutes under which litigation arises.

**A. Civil construction and operation of projects and facilities.** Chief among these statutes are: 1) the Federal-Aid Highway Act of 1958, 72 Stat. 885, as amended, 23 U.S.C. Sec. 101 *et seq.*, 2) Flood Control Act of 1938, 52 Stat. 1215, *as amended*, 33 U.S.C. Sec. 701b *et seq.*, and other civil works authorities of the U.S. Army Corps of Engineers, some of which are codified at 33 U.S.C. Sec. 540 *et seq.*; 3) Airport and Airway Development Act of 1970, 84 Stat. 220, *as amended*, 49 U.S.C. Sec. 1711 *et seq.*; Housing and Community Development Act of 1974, 88 Stat. 633, 42 U.S.C. Sec. 5301 *et seq.*

**B. National Environmental Policy Act and similar procedural and review statutes.** Regardless of the agency involved: 1) the National Environmental Policy Act of 1969, 42 U.S.C. Sec. 4321 *et seq.*; 2) the National Historic Preservation Act of 1966, as amended, 16 U.S.C. Sec. 470 *et seq.* (for all such cases, *see* USAM 5-7.300); and 3) Fish and Wildlife Coordination Act, 16 U.S.C. Secs. 661 to 666c, except sec. 666a (*see* USAM 5-10.120).

**C. Federal Land Management.** The statutes under which the Bureau of Land Management, the Forest Service, the Fish and Wildlife Service and the National Park Service administer lands and resources under their jurisdiction, excepting those matters related to wildlife management delegated to the Wildlife and Marine Resources Section (*see* USAM 5-10.100). Chief among these statutes are: 1) (Bureau of Land Management) Federal Land Policy and Management Act, 43 U.S.C. Sec. 1701 *et seq.*, Taylor Grazing Act of 1934, 43 U.S.C. Sec. 315 *et seq.*; 2) (Forest Service) "Organic Act of 1897", 16 U.S.C. Sec. 471 *et seq.*, Weeks Act of 1911 (eastern acquired lands forests), found in part at 16 U.S.C. Secs. 513 to 519, 36 Stat. 961, National Forest Management Act, 16 U.S.C. Sec. 1601 *et seq.*; 3) (Fish and Wildlife Service) National Wildlife Refuge System Administration Act, as amended, 16 U.S.C. Secs. 668dd and 668ee; 4) (National Park Service) National Park Service Act, 16 U.S.C. Secs. 1 to 4, and the authorizing statutes for individual units of the National Park System, 16 U.S.C. Secs. 21 through 460mm, and the Historic Sites, Buildings and Antiquities Act of 1935, 16 U.S.C. Secs. 461 to 467.

**D. Mineral exploration and development.** Statutes governing mineral activity on federal lands: 1) General Mining Law of 1872, *as amended*, 30 U.S.C. Sec. 22 *et seq.*, 2) Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. Sec. 181 *et seq.*, 3) Mineral Leasing Act for Acquired Lands, 30 U.S.C. Sec. 351 *et seq.*, 4) Outer Continental Shelf Lands Act, 43 U.S.C. Sec. 1331 *et seq.*, 5) Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. Sec. 1701 *et seq.*

**E. Indian cases.** 1) Suits by Indian tribes, individuals or allottees against the United States under treaties and agreements with Indians, and in the administration of statutes governing Indian lands, Indian resources, Indian assistance programs, and actions with respect to tribal self-government, and 2) Alaska Native Claims Settlement Act, 43 U.S.C. Sec. 1601 *et seq.*

**F. Water Rights and Projects.** 1) Reclamation Act of 1902, *as amended*, 43 U.S.C. Sec. 431 *et seq.*, and other project authorizations of the Bureau of Reclamation; and 2) McCarran Act of 1952, 43 U.S.C. Sec. 666, involving adjudication of federal water rights in state courts, except for Indian water rights (*see* USAM 5-5.100).

**G. Boundaries, Quiet Title and Navigation.** 1) Quiet Title Act, *as amended*, 28 U.S.C. Sec. 2409a, including suits by states regarding navigability under the Equal Footing doctrine, 2) Sections 9 and 11 of the Rivers and Harbors Act of 1899, 33 U.S.C. Secs. 401, 404, and 3) Submerged Lands Act of 1953, 43 U.S.C. Sec. 1301 *et seq.*

**H. Other statutes of general applicability.** 1) Tucker Act, 28 U.S.C. Secs. 1346(a)(2) and 1491 (for all matters within the responsibility of the Environment and Natural Resources Division (USAM 5-1.100)), 2)

Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201 *et seq.*, 3) Coastal Zone Management Act, 16 U.S.C. Sec. 1415 *et seq.*, 4) Alaska National Interest Lands Conservation Act of 1980, Pub.L. No. 96-487, and 5) Wilderness Act of 1964, 16 U.S.C. Sec. 1131 *et seq.*

## **5-7.200 Organization**

The Section is administered by a Chief, a Deputy Chief, and three Assistant Chiefs. Information related to any matter in the section may be sought by calling any of these five at 202-305-0440. The work load is assigned according to experience, expertise and workload. The section has distributed to United States Attorneys' offices a listing of the expertise of section personnel. Information on a specific case should be sought from the attorney assigned. Information on case assignment is available from the docket clerk, 202-305-0489.

## **5-7.300 Processing and Handling Cases -- Special Provisions**

**A. National Historic Preservation Act.** The Department of Justice has agreed, pursuant to 16 U.S.C. Sec. 470k, to notify the Advisory Council on Historic Preservation of all cases involving the National Historic Preservation Act, 16 U.S.C. Sec. 470 *et seq.*, or regulations promulgated thereunder (36 C.F.R. Part 800). The Advisory Council will rarely be a party to the litigation, but the Council is charged, *inter alia*, with advising the President and Congress on matters relating to historic preservation and with reviewing federal, federally assisted, and federally licensed undertakings affecting cultural properties.

Many of these cases involve proposed alterations to, or demolition of, historic structures, and may originate as temporary restraining orders. It is especially important, therefore, that the Section receive early notice of these cases, so that it can then notify the Advisory Council. Accordingly, upon receipt of any complaint raising an issue under the National Historic Preservation Act, the United States Attorney's Office should call the attorney assigned to the case in the Department of Justice in Washington, D.C. who will then notify the Council. Most of the cases involving the Act or regulations are within the jurisdiction of the General Litigation Section, Environment and Natural Resources Division, 202-305-0440. In the event a request for a temporary restraining order is filed before the case is assigned to a General Litigation attorney, the Chief of that Section should be notified.

**B. Biotechnology Litigation.** Litigation involving biotechnology and its environmental implications is handled in the Environment and Natural Resources Division. Within the Division, the cases -- whether filed by complaints in the district courts or by petitions for review in the courts of appeals -- are assigned to a team of attorneys from the Division, usually from the General Litigation Section (*see* USAM 5-7.120), Environmental Defense Section (*see* USAM 5-6.130), or the Wildlife and Marine Resources Section (*see* USAM 5-10.120), as appropriate, depending on the statutes identified and claims raised. If such litigation is filed in your district, please contact the chief of any of the above-stated sections who will contact the other appropriate sections.

## **5-7.310 Authority of United States Attorneys to Initiate and Defend Actions Without Prior Authorization, i.e., Direct Referral Cases**

The authority of United States Attorneys to initiate cases under the supervision of the General Litigation Section is set forth in USAM 5-1.310.

## **5-7.311 Actions to Recover Money to be Instituted Only Where a Judgment is Collectible**

No action for the recovery of money only shall be instituted unless the referring agency supplies satisfactory proof that a judgment, if recovered, would be collectible.

### **5-7.312 Authority of United States Attorneys to Defend Actions Without Prior Authorization**

United States Attorneys are hereby authorized to act in the following matters, in response to service on the United States, without assignment of the case from the Environment and Natural Resources Division, in the following cases:

- A. Actions under 28 U.S.C. Sec. 2410 affecting property in which the United States has a lien, except where the lien is a tax lien. *See* Title 6-TAX DIVISION, USAM. *See also* Environment and Natural Resources Division Directive No. 9-68 (August 5, 1968): "Procedure for the Handling of Condemnation Actions against the United States under or purportedly under Title 28 U.S.C. Sec. 2410."
- B. Suits for judicial review of decisions of the Department of the Interior regarding the probate or estate administration of deceased Indians' interests in trust or allotted land.
- C. Actions to recover possession of, or quiet title to, property from tenants, squatters, trespassers, or others, and actions to enjoin trespasses on federal property.
- D. Actions to collect costs of Forest Fire suppression and other damages resulting from such fires.

### **5-7.320 Actions Not Subject to Direct Referral to United States Attorney**

Responsibility for the handling of cases under the supervision of the General Litigation Section is assigned by the Chief of the Section under the provisions of USAM 5-1.326.

### **5-7.321 Prior Authorization Needed to Initiate Action**

Except for cases authorized to be filed by USAM 5-1.310 no case under the supervision of the General Litigation Section may be initiated by a United States Attorney without the prior authorization of the Assistant Attorney General.

### **5-7.500 District Court Litigation -- Generally**

The general instructions set forth in USAM 5-5.100 *et seq.*, with respect to the handling of litigation apply in every respect to the litigation of the General Litigation Section. Particularly, it is of the utmost importance that complaints filed against the federal government and federal officials in matters relating to the area of responsibility of the General Litigation Section be transmitted promptly to the Chief of the Section.

### **5-7.520 Lis Pendens**

Whenever required by the nature of the case, the attorney assigned to the case shall, or assure that the agency shall, file or record a notice of the pendency of the action or lis pendens among the proper local records, except in those jurisdictions where the law is settled that the commencement of the action is notice to all persons affected.

### **5-7.530 Judgments**

United States Attorneys should note and comply with the instructions relating to the recording, collection and enforcement of judgments set forth in USAM 5-5.151 through 5-5.156.

## **5-7.600 Settlement and Dismissal of Cases -- Generally**

Except with respect to direct referral cases (discussed in USAM 5-7.630) no claim or case under the jurisdiction of the General Litigation Section may be settled or dismissed without specific or delegated authority from the Assistant Attorney General. *See* USAM 5-5.210 *et seq.*

## **5-7.620 Transmittal of Compromise Offer to General Litigation Section -- Recommendations With Respect to Acceptance**

Any offer to settle or dismiss an action shall be transmitted to the Chief of the General Litigation Section for referral to the Assistant Attorney General or for such other action as may be directed by regulation. Such offers should be accompanied by the written comments and recommendation of the referring agency and the United States Attorney. In emergency situations, such as with settlement offers received during trial, settlement offers dealing exclusively with monetary damages or penalties may be communicated to the Chief of the General Litigation Section by telephone.

The recommendation should be guided by the principles that compromise offers cannot be accepted unless (a) there is doubt as to whether judgment can be secured for an amount larger than that offered or (b) because the probable cost of collection exceeds the difference between the amount offered and the amount recoverable.

## **5-7.630 Authority of United States Attorneys to Settle or Dismiss Direct Referral Cases**

The authority of United States Attorneys to settle or dismiss direct referral cases under the supervision of the General Litigation Section is set forth in USAM 5-5.230.